**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CRIMINAL APPLICATION No. 1415 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KAMALABEN NATUBHAI VAGHRI - Applicant(s)**
**Versus**
**THE STATE OF GUJARAT & 9 - Respondent(s)**

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**Appearance :**
MR HEMANT B RAVAL for Applicant(s) : 1,
Mr. RC Kodekar, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 10.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 03/08/2007**
**ORAL JUDGMENT**

Rule. Shri RC Kodekar, learned Additional Public Prosecutor waives service of Rule on behalf of respondent No.1 State. With

the consent of learned advocates appearing on behalf of the parties, the matter is taken up for Final Hearing today.

2. By way of this petition under Article 226 of the Constitution of India the petitioner, original-informant, mother of deceased victim has prayed for an appropriate order or direction for entrusting investigation of death of her son Pankaj to some higher police officer or CBI or Gandhinagar Crime Branch and to direct them to further investigate into the complaint and offences. Son of the petitioner has been killed/has died on 9th May 2007 and inspite of a statement made by the petitioner disclosing cognizable offences under Section 302, 120(B) of the Indian Penal Code no further investigation was carried out by Dabhoda police station and therefore the petitioner has preferred the present Special Criminal Application.

3. Shri RC Kodekar, learned Additional Public Prosecutor has produced on record the police papers. This Court has also considered the Post Mortem Report which is prepared after availability of the FSL Report. In the final opinion it is stated that, “Cause of death is due to – post mortem findings suggesting of poison. However poison cannot be detected in FSL analysing”. Even after considering the above report dated 25.6.2007, it appears that no further investigation has been carried out by the Dabhoda police station. It was incumbent upon the concerned Investigating Officer of Dabhoda Police Station to further investigate into the case for the offences under Section 302 read with 120(B) of the Indian Penal Code. This Court is not at present giving any opinion whether any case is made out for the offences under Section 302, 120(B) of the IPC or not. However, considering the post mortem report and other police papers certainly this is a fit case which deserves further investigation into the offences.

Therefore, it appears to the Court that the investigation into the offences by the Dabhoda Police Station is not on a right direction as ought to have been conducted. Under the circumstances, the petitioner is justified in making the grievance for transferring the investigation from Dabhoda police station to any other superior authority in view of the seriousness of commission of offences and the allegations. Now considering the P.M. Report also, the investigation is required to be carried out by a Police Officer now below the rank of Deputy Superintendent of Police. In the facts and circumstances, the investigation of the case being A.D. No. I-34 of 2007 is directed to be transferred from Dabhoda police station to Gandhinagar Police Station for investigation by Deputy Superintendent of Police or any other officer of equivalent rank at Gandhinagar and the Dy.S.P., is directed to further investigate into the case in light of the observations made hereinabove and considering the materials on

record and submit an appropriate Report before competent Court.

4. With these, the present Special Criminal Application is allowed. Rule is made absolute. Direct service is permitted.

[ M.R. Shah, J. ]

rmr.